

**ASSEMBLY BILL**

**No. 1767**

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**Introduced by Assembly Member Hill**

February 9, 2010

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An act to add Section 2316 to the Business and Professions Code, relating to physicians and surgeons.

LEGISLATIVE COUNSEL'S DIGEST

AB 1767, as introduced, Hill. Physicians and surgeons: expert testimony.

Existing law requires a board under the Business and Professions Code, including the Medical Board of California, to provide legal representation to any person hired or under contract who provides expertise to the board in the evaluation of an applicant or the conduct of a licensee when that person is named as a defendant in a civil action arising out of the evaluation or any opinions rendered, statements made, or testimony given to the board. Existing law also provides immunity from civil liability to any person providing testimony to the Medical Board of California, the California Board of Podiatric Medicine, or the Department of Justice indicating that a licensee may be guilty of unprofessional conduct or may be impaired because of drug or alcohol abuse or mental illness.

This bill would require the Medical Board of California to provide representation to any licensed physician and surgeon who provides expertise to the board in the evaluation of the conduct of an applicant or a licensee when, as a result of providing that expertise, the physician and surgeon is subject to a disciplinary proceeding undertaken by a specialty board of which the physician and surgeon is a member.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. (a) The Legislature finds and declares that  
2 consumer protection is further strengthened when the Medical  
3 Board of California uses board-certified physicians and surgeons  
4 in the investigation of complaints and the prosecution of  
5 administrative disciplinary actions. The Legislature further finds  
6 and declares that the use of board-certified physicians and surgeons  
7 is consistent with the requirements of Section 2220.08 of the  
8 Business and Professions Code, and in conformity with existing  
9 case law that requires that the standard of care and any deviations  
10 from the standard of care be established by expert witnesses.

11 (b) The Legislature finds and declares that a disturbing trend  
12 may be emerging whereby board-certified physicians and surgeons  
13 may be subject to discipline from the very boards that certified  
14 them as expert witnesses for the Medical Board of California in  
15 administrative proceedings. Actual or threatened discipline against  
16 board-certified physicians and surgeons may chill participation in  
17 the board's expert reviewer program and may significantly impair  
18 and hamper the effective and timely resolution of complaints and  
19 licensure and disciplinary actions. The Legislature finds and  
20 declares that the enactment of legislation is necessary to prevent  
21 this occurrence and for the protection of California consumers.

22 SEC. 2. Section 2316 is added to the Business and Professions  
23 Code, to read:

24 2316. If a licensed physician and surgeon who provides  
25 expertise to the board in the evaluation of an applicant or a licensee  
26 is, as a result of providing that expertise, the subject of a  
27 disciplinary proceeding undertaken by a specialty board of which  
28 the physician and surgeon is a member, the board shall provide  
29 representation for the physician and surgeon in that disciplinary  
30 proceeding.